

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**GARY FRANKLIN ROBINSON,**

**Plaintiff,**

**-against-**

**9:11-CV-0758**

**W. BROWN, Superintendent, et al.,**

**Defendants.**

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**DECISION & ORDER**

**Thomas J. McAvoy, S.U.S.D.J.:**

This action, brought pursuant to 42 U.S.C. § 1983, was referred by this Court to the Honorable David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In the Report-Recommendation, the Magistrate Judge recommends that Defendants' motion to dismiss be granted and the amended Complaint be dismissed with leave to replead only the procedural due process claim against the defendants in their individual capacities. No objections to the Report-Recommendation dated November 1, 2012 have been filed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein.

For the foregoing reasons, the Court ADOPTS the Report and Recommendation and grants the motion to dismiss with leave to replead the procedural due process claim.

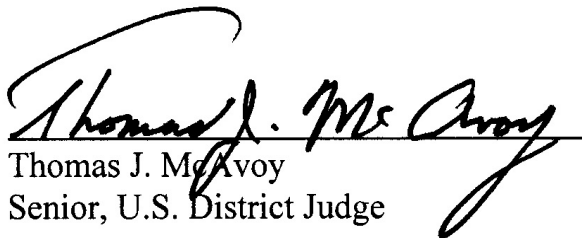
The Court notes that Plaintiff has already submitted a second proposed amended complaint. Upon review of the second amended complaint pursuant to 28 U.S.C. §

1915A, the Court finds that the proposed Second Amended Complaint fails to adequately state a procedural due process claim against any of the named Defendants. The Second Amended Complaint complains of other inmates throwing feces that has nothing to do with any of the named Defendants.

Accordingly, the Clerk of the Court is directed to: (1) file Plaintiff's proposed second amended complaint found at Dkt. No. 38(1) and; (2) dismiss the second amended complaint pursuant to this Order.

**IT IS SO ORDERED.**

Dated: January 4, 2013

  
Thomas J. McAvoy  
Senior, U.S. District Judge